

House Bill 1312

By: Representatives Benfield of the 85th, Dawkins-Haigler of the 93rd, Stephenson of the 92nd, Brooks of the 63rd, Henson of the 87th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the death penalty generally, so as to provide for a moratorium on the administration of death sentences; to provide a statement of legislative findings; to provide for conflicts and construction; to provide for applicability; to provide for automatic repeal; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

The General Assembly finds that:

(1) Life is the most valuable possession of a human being, and there has been increasing public awareness of individuals wrongfully convicted of murder in Georgia and elsewhere in the nation;

(2) The execution of an innocent person by the State of Georgia would be a grave and irreversible injustice;

(3) In January, 2006, the American Bar Association published *Ensuring Fairness and Accuracy in State Death Penalty Systems: The Georgia Death Penalty Assessment Report*, which analyzed 12 issues related to Georgia's laws, procedures, and practices related to the death penalty in Georgia, and a majority of the members of the Georgia Death Penalty Assessment Team have called for a moratorium on executions and capital prosecutions;

(4) There is public concern that racial and socioeconomic factors influence decisions to seek or impose the death penalty, and there is a lack of any meaningful procedure to ensure uniform application of the death penalty in each county throughout this state; and

(5) In order for the state to protect its moral and ethical integrity, the state must ensure a justice system which is impartial, uncorrupted, equitable, and competent, and further study is necessary to ensure that the state is fulfilling its obligation in this sense and, therefore, a moratorium on administration of the death penalty is warranted.

SECTION 2.

Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the death penalty generally, is amended by revising Code Section 17-10-38, relating to death sentences generally, as follows:

"17-10-38.

(a) Except as provided in subsection (e) of this Code section, all ~~At~~ persons who have been convicted of a capital offense and have had imposed upon them a sentence of death shall suffer such punishment by lethal injection. ~~Lethal injection is~~ As used in this Code section, the term 'lethal injection' means the continuous intravenous injection of a substance or substances sufficient to cause death into the body of the person sentenced to death until such person is dead.

(b) In all cases in which the defendant is sentenced to death, it shall be the duty of the trial judge in passing sentence to direct that the defendant be delivered to the Department of Corrections for execution of the death sentence at a state correctional institution designated by the department.

(c) Notwithstanding any other provision of law, prescription, preparation, compounding, dispensing, or administration of a lethal injection authorized by a sentence of death by a court of competent jurisdiction shall not constitute the practice of medicine or any other profession relating to health care which is subject by law to regulation, licensure, or certification.

(d) No state agency, department, or official may, through regulation or otherwise, require or compel a physician to participate in the execution of a death sentence. As used in this subsection, the term 'to ~~To~~ participate in the execution of a death sentence' means any of the following actions: selecting injection sites; starting an intravenous line or lines as a port for a lethal injection device; prescribing, preparing, administering, or supervising injection drugs or their doses or types; inspecting, testing, or maintaining lethal injection devices; or consulting with or supervising lethal injection personnel.

(e) A moratorium shall be imposed upon carrying out a sentence of death, and during this moratorium, no death sentence shall be carried out. This subsection shall apply to all pending and future cases in which the defendant has been sentenced to death and shall remain in effect from the date this Code section becomes effective until December 31, 2010. This Code section shall stand automatically repealed on January 1, 2011."

SECTION 3.

(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

62 (b) Except as provided in this Act, this Act shall not be construed to affect the laws
63 governing capital cases and death sentences, including, but not limited to, the procedures and
64 time periods for notifications, determinations, and judicial review.

65 **SECTION 4.**

66 All laws and parts of laws in conflict with this Act are repealed.